

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SCOT B. ACTON,

11 Plaintiff,

v.

12 TARGET CORPORATION, et al.,

13 Defendants.

CASE NO. C08-1149RAJ  
ORDER

14 **I. INTRODUCTION**

15 This matter comes before the court on Plaintiff Scot Acton's motion to compel  
16 discovery. Dkt. # 31. No party requested oral argument, and the court finds argument  
17 unnecessary. The court has considered the parties' briefing and supporting evidence. For  
18 the reasons stated below, the court GRANTS the motion in part and DENIES it in part.

19 **II. BACKGROUND**

20 Mr. Acton worked at Defendants' Target retail store in Burlington from June 2001  
21 until Defendants (collectively "Target") terminated him in December 2007. Mr. Acton  
22 worked in the store's Asset Protection department, and by the time of his termination he  
23 was the department's head or "employee team leader." Asset Protection employees are  
24 responsible, among other things, for preventing and responding to shoplifting and  
25 employee theft. In addition to his duties at the Burlington store, Mr. Acton worked in  
26 Asset Protection at Target's Bellingham store from January 2007 to June 2007 while  
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1 Target looked for a replacement for a Bellingham employee who had resigned. Mr.  
2 Acton also helped install security cameras at six other Target stores. Both the  
3 Bellingham and Burlington stores are among the ten stores in Target’s District 157.  
4 Jerrod Johnson was the head of Asset Protection for District 157. He shared supervisory  
5 authority over Mr. Acton with Jeff Tomlinson, the “store team leader” for the Burlington  
6 store.

7 Mr. Acton contends that Target terminated him because of his disability and in  
8 retaliation for invoking the Family and Medical Leave Act (“FMLA”) to take leave to  
9 accommodate that disability from August 2007 until just before his December 2007  
10 termination. Mr. Acton does not reveal in his motion what disability he allegedly suffers  
11 from, and so far as the court is aware, the remainder of the record is similarly silent.  
12 Target claims that it terminated Mr. Acton on Mr. Johnson’s recommendation because  
13 Mr. Acton used excessive force in July 2007 when apprehending a shoplifting suspect at  
14 the Burlington store.

15 The record reflects little information about who was responsible for terminating  
16 Mr. Acton. Mr. Acton refers in his motion to his “supervisors,” but identifies none of  
17 them. Mot. at 6. He mentions a few other employees, but gives the court virtually no  
18 information about them. Mr. Johnson declares that he “recommend[ed]” Mr. Acton’s  
19 termination, but does not reveal to whom he recommended it. Johnson Decl. (Dkt. # 36)  
20 ¶ 4.

21 On this skimpy record, the court now turns to Mr. Acton’s motion to compel  
22 responses to at least 30 interrogatories and requests for production, spread over two sets  
23 of discovery requests.

### 24                           **III. ANALYSIS**

25                           The court has broad discretion to control discovery. *Childress v. Darby Lumber,*  
26 *Inc.*, 357 F.3d 1000, 1009 (9th Cir. 2004). That discretion is guided by several principles.  
27 Most importantly, the scope of discovery is broad. A party must respond to any  
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1 discovery request that is “reasonably calculated to lead to the discovery of admissible  
2 evidence.” Fed. R. Civ. P. 26(b)(1). The court, however, must limit discovery where its  
3 “burden or expense . . . outweighs its likely benefit, considering the needs of the case, the  
4 amount in controversy, the parties’ resources, the importance of the issues at stake in the  
5 action, and the importance of the discovery in resolving these issues.” Fed. R. Civ. P.  
6 26(b)(2)(C)(iii).

7 Mr. Acton’s motion to compel covers dozens of interrogatories and requests for  
8 production of documents and things. For the most part, the application of the basic  
9 discovery principles to these discovery requests requires little discussion. One issue,  
10 however, requires greater elaboration.

11 Much of the briefing and evidence before the court is devoted to Mr. Acton’s  
12 effort to take discovery about Target employees throughout the State of Washington.  
13 Target asserts (and Mr. Acton does not question) that it employs thousands of people in  
14 Washington, and indeed employs more than a thousand people at its Burlington Store  
15 alone. Mr. Acton makes no effort to explain why discovery about employees in, for  
16 example, Spokane, will be of any value in the pursuit of his claims. He does not allege  
17 that the one or more decisionmakers responsible for his termination had similar authority  
18 over employees in stores across Washington. Indeed, he has not alleged that any of the  
19 decisionmakers responsible for his termination had similar authority over employees in  
20 *any* other store, even those that are close in proximity to the Burlington store. He does  
21 not allege that Target has a statewide policy, much less that this statewide policy bears on  
22 his claims. In short, he gives the court no basis to conclude that forcing Target to provide  
23 information on employees in stores across Washington would lead to the discovery of  
24 admissible evidence.

25 In place of cogent argument connecting his case to evidence concerning other  
26 Target stores, Mr. Acton repeatedly asserts that he is seeking “pattern and practice”  
27 evidence. Mot. at 4, 7-9. He is not, however, attempting to prove a pattern-or-practice  
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1       claim, nor is it likely that he could do so, as every court to address the issue has held that  
2       individuals may not pursue such claims on their own behalf. *See, e.g., Davis v. Coca-*  
3       *Cola Bottling Co. Consol.*, 516 F.3d 955, 969 & n.30 (11th Cir. 2008) (citing cases from  
4       three other circuits). Pattern-or-practice evidence, moreover, is discoverable only where  
5       a plaintiff can make some showing to connect it to his claims. It is typically easy to do so  
6       where the evidence relates to other discriminatory conduct at the same workplace.  
7       Indeed, with one exception, every case that Mr. Acton relies on in his misplaced pattern-  
8       or-practice argument is one in which a court at least implicitly approves of discovery  
9       regarding discrimination within the same work facility. *See* Acton Mot. at 7-9 (citing  
10      cases). But for that single exception, none of the cases Mr. Acton cites so much as refer  
11      to a pattern or practice of discrimination.

12      The exception, moreover, merely highlights the difference between appropriately  
13      extending employment discrimination discovery to other workplaces and the discovery  
14      misadventure that Mr. Acton proposes. In *EEOC v. Lowe's HIW, Inc.*, Case No. C08-  
15      331JCC, Dkt. # 120 (Dec. 23, 2008), the Honorable John C. Coughenour of this District  
16      considered sexual harassment claims from five plaintiffs who worked at a nationwide  
17      retailer's Longview store. To bolster their claim to discovery regarding discrimination  
18      claims at stores throughout Washington and Oregon, the plaintiffs presented (apparently  
19      unrebutted) assertions that the actors and decisionmakers involved in discriminating  
20      against them were regional-level managers. *Id.* at 7. At least five of the discriminators or  
21      their managers had worked at the retailer's other stores in Washington and Oregon. *Id.* at  
22      8. The human resources personnel who addressed plaintiffs' complaints supported other  
23      stores in the region. *Id.* For those reasons, the court permitted the plaintiffs to pursue  
24      limited discovery as to employees in other stores. *Id.* (declining to permit discovery as to  
25      race or disability discrimination). In this case, by contrast, there is a single plaintiff, and  
26      virtually no evidence or allegation to suggest that his claims require discovery into other  
27      stores' employees. There is no suggestion that decisions regarding Mr. Acton were made  
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1 at the statewide level. With the exception of Mr. Johnson, who had partial supervisory  
2 authority over Asset Protection employees in District 157, there is no evidence of any  
3 supervisor with authority at more than one Target store. There is no evidence that human  
4 resources staff with responsibility for more than one store participated in the decision to  
5 terminate Mr. Acton. Indeed, with the exception of the Bellingham store, at which Mr.  
6 Acton filled in for a short time, and six unidentified stores at which he installed security  
7 cameras, there is no information at all about any other Target store.

8 Information regarding other instances of discrimination by an employer can be  
9 relevant. Information about prior discrimination at the *same location* is particularly  
10 relevant, as the cases Mr. Acton cites amply illustrate. To extend discovery into other  
11 stores spread across an entire state, however, a plaintiff cannot rely solely on repeated  
12 cries of a pattern or practice of discrimination. *See, e.g., Gitty v. Oak Park*, 919 F.2d  
13 1247, 1252 & n.7 (7th Cir. 1990) (upholding denial of discovery into other instances of  
14 discrimination, noting that a pattern or practice of discrimination is at most “collaterally  
15 relevant” to an individual discrimination claim). To be sure, there is no categorical bar  
16 on the pursuit of such evidence. *See Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742,  
17 761 (4th Cir. 1998) (explaining how pattern and practice evidence can be relevant to an  
18 individual discrimination claim). In this case, however, where Mr. Acton offers no  
19 factual predicate for extending discovery on a statewide basis, the denial of such  
20 discovery is well within the court’s discretion. *See, e.g., Maresco v. Evans Chemetics*,  
21 964 F.2d 106, 114 (2d Cir. 1992) (noting court’s broad discretion to control discovery of  
22 discrimination against other employees); *EEOC v. AMB Indus., Inc.*, No. 1:07-cv-01428-  
23 LJO-TAG, 2008 U.S. Dist. LEXIS 105649, at \*20-24 (E.D. Cal. Dec. 22, 2008)  
24 (rejecting, in employment discrimination class action, request for statewide discovery).

25 With those guidelines in mind, the court now turns to the parties’ discovery  
26 disputes. Mr. Acton claims that Target either did not respond or responded incompletely  
27 to at least 30 discovery requests. Rather than address each request individually, an  
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1 exercise that would convert this order into a novella, the court will make a series of  
2 orders about categories of discoverable information. Each order will require Target to  
3 provide a written response, to produce documents, or both. Target must sign its written  
4 responses in the manner described in Fed. R. Civ. P. 33(b). To the extent Target has  
5 partially or completely provided the written response or documents that each order  
6 requires, it shall state as much. To the extent that these orders do not address one or more  
7 aspects of Mr. Acton's motion to compel, the omission is intentional, and that portion of  
8 the motion is denied.

9 **A. Videotapes**

10 Target has satisfied its obligation to produce analog and digital video recording of  
11 the shoplifter apprehension that allegedly led to Mr. Acton's termination. No further  
12 production or reformatting is required. The same is true of Defendants' production of  
13 "Best Of" videos, which are apparently videos showing a collection of shoplifter  
14 apprehensions from Target Stores across the country. These videos are relevant because  
15 they were used in the training of Asset Protection employees. Target need not identify  
16 the stores or employees depicted in the "Best Of" videos. Finally, Target must produce  
17 any other videos depicting shoplifter apprehensions that were shown *for training*  
18 *purposes* either to Mr. Acton, other Burlington employees, or to any employee who  
19 participated in the decision to discipline Mr. Acton. To the extent Target has documents  
20 referring to any of the videos described in this paragraph, it must produce them.

21 **B. Information Regarding Other Target Employees**

22 Mr. Acton has moved to compel interrogatory responses and document production  
23 as to an extraordinary number of Target employees. He requests complete personnel files  
24 for dozens of employees without identifying any justification for reviewing their entire  
25 files. He seeks to compel Target to review employee information for its stores across the  
26 state of Washington, despite failing to demonstrate the relevance of information related to  
27 employees other than at Target's Burlington store. Although the court declines to discuss  
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1 each request for production and interrogatory in this order, it has examined each of them  
2 and considered them individually and collectively. They are strikingly overbroad, and  
3 the court makes a substantial understatement in declaring that they would impose undue  
4 burden and expense on Target. The court will require Target to produce only the  
5 following information and documents.

6       **1. For all Asset Protection employees in District 157 from the beginning  
7 of 2002 to the end of 2008**

8       Target must name all such employees, and identify which stores they worked at,  
9 which position or positions they held, and the duration of their employment. To the  
10 extent Target's counsel will not be representing these employees with respect to this  
lawsuit, it shall provide contact information for those employees.

11      Target must identify any such employees terminated, disciplined, or investigated  
12 for incidents involving the apprehension or confrontation of persons suspected of theft,  
13 and produce any documents related to such apprehensions, confrontations, or  
14 investigations. In identifying those employees, Target must state the store or stores at  
15 which they worked, the duration of their employment, and the reason that they ceased  
16 working at Target (if applicable).

17       **2. For all employees at Target's Burlington store from the beginning of  
18 2002 to the end of 2008**

19      Target must identify any such employees who requested leave under the Family  
20 Medical Leave Act. In identifying those employees, Target must state the reason for the  
21 FMLA request, whether the request was granted or denied, the duration of the leave (if  
22 applicable) the store or stores at which they worked, the duration of their employment,  
23 and the reason that they ceased working at Target (if applicable).

24      Target must identify any such employees who made a claim of discrimination on  
25 the basis of their disability status or retaliation for protected activities involving disability  
26 status or FMLA leave, including any related lawsuits against Target. In identifying those  
27 employees, Target must state when they made the claim or filed the lawsuit, the store or  
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1 stores at which they worked, the duration of their employment, and their reason that they  
2 ceased working at Target (if applicable). Target must produce any documents related to  
3 those claims or lawsuits and their investigation and resolution.

4 As to each of the above categories, the court has generally declined to order Target  
5 to produce discovery related to employees who sought accommodation for a disability.  
6 The court does so because Mr. Acton has not revealed what disability affects him, and  
7 has not revealed any accommodation that he requested for that disability, other than his  
8 FMLA leave in 2007. Without that information, the court is in no position to determine  
9 which Target employees might serve as comparators, or what types of disability  
10 accommodation requests might be relevant to Mr. Acton's claims.

11 **C. Additional Discovery**

12 To the extent it has not already done so, Target must identify any employees  
13 involved in the decision to terminate Mr. Acton, and must provide a description of the  
14 authority each such employee had to recommend or approve disciplinary measures  
15 against Mr. Acton.

16 Target must describe the process that led to Mr. Acton's termination, beginning  
17 with the first discovery of the incident for which he was allegedly fired.

18 Target must produce any training or informational materials provided to  
19 employees in District 157 regarding FMLA leave and FMLA leave requests.

20 Target must describe any procedures for employees to internally lodge complaints  
21 at its Burlington store from the beginning of 2002 through the termination of Mr. Acton's  
22 employment, and must produce any documents describing those procedures.

23 Target must produce Mr. Acton's complete personnel file. To the extent they are  
24 not contained in Mr. Acton's personnel file, Target must produce all documents related to  
25 any contemplated or completed disciplinary actions against Mr. Acton, any complaints  
26 made by Mr. Acton (other than this lawsuit) and the resolution of those complaints, and

1 any documents related to Mr. Acton's requests for disability accommodation or FMLA  
2 leave.

3 **IV. CONCLUSION**

4 The court GRANTS in part and DENIES in part Mr. Acton's motion to compel  
5 (Dkt. # 31), in the manner stated above. Target shall provide additional discovery as  
6 ordered above no later than November 18, 2009.

7 DATED this 16th day of October, 2009.

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The Honorable Richard A. Jones  
United States District Judge